

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 27

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THEODORE BAUMULLER

Appeal No. 2000-1025
Application No. 08/726,643

ON BRIEF

Before GARRIS, OWENS, and DELMENDO, Administrative Patent Judges.
GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the final rejection of claims 1-13 which are all of the claims in the application.

The subject matter on appeal relates to a method of making cushioning dunnage comprising the steps of providing an elongated band of stock material formed from at least two elongated paper webs adhered together, folding the lateral edges of the band

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laterally inwardly and alternately crumpling the band longitudinally on first one side of the longitudinal axis of the band and then on the other side of the longitudinal axis of the band to form pleats in the band. The appealed subject matter also relates to cushioning dunnage made according to the aforementioned method. This appealed subject matter is adequately illustrated by independent claims 1 and 13 which read as follows:

1. A method of making cushioning dunnage comprising the steps of:

providing an elongated band of stock material having lateral edges and a longitudinal axis, the band of stock material being formed from at least two elongated paper webs, at least one of which is made of Kraft paper, adhered together along the lengths of the webs by glue applied to one of the webs in a gluing area having a length along a longitudinal axis of the one web and a width transverse to the one web longitudinal axis, the transverse location of glue applied to the gluing area varying as a function of the longitudinal location along the gluing area in order to avoid forming a straight line of glue parallel to the longitudinal axis of the one web;

driving the band longitudinally;

folding the lateral edges of the band laterally inwardly;

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alternatingly crumpling the band longitudinally on first one side of the longitudinal axis of the band and then on the other side of the longitudinal axis of the band to form pleats in the band; and

connecting the pleats in the band by compressing the band through the thickness of the band.

13. Cushioning dunnage made according to any of claims 1-12.

The references relied upon by the examiner as evidence of obviousness are:

Ottaviano	4,085,662	Apr. 25, 1978
Baldacci et al. (Baldacci)	4,937,131	Jun. 26, 1990
Givens	5,143,776	Sep. 1, 1992

All of the claims on appeal stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ottaviano in view of Givens, and alternatively, claim 6 stands correspondingly rejected over these references and further in view of Baldacci. On pages 4 and 5 of the answer, the examiner expresses his basic position as follows:

[T]he Examiner[']s position is that it would have been obvious to one of ordinary skill in this art to employ the conventional, documented, alternative sinusoidal adhesive pattern/application technique of GIVENS in the process of OTTAVIANO in place of the corresponding, analogous straight line adhesive pattern (which may be continuous or discontinuous)/application technique employed therein; mere substitution of one known adhesive pattern/application technique used in the bonding/joining of cellulosic (e.g., paper) substrates for another involved. Further along this line (and the foregoing GIVENS reference notwithstanding),

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in the absence of unexpected results, the location and extent/pattern of adhesive applied/employed to adhere the respective plies of the rolled, multiply sheet stock material together is held/seen to constitute at most an obvious matter of choice/experience to one of ordinary skill in this art.

OPINION

These rejections cannot be sustained.

Even if the applied prior art were combined in the manner proposed by the examiner, the result would not satisfy a number of the appealed claim requirements. Specifically, the examiner's proposed combination would not satisfy the appealed method claim 1 (and correspondingly the appealed product-by-process claim 13) requirements of "providing an elongated band of stock material . . . formed from at least two elongated paper webs . . . adhered together . . . " and of "alternatingly crumpling the band longitudinally on first one side of the longitudinal axis of the band and then on the other side of the longitudinal axis of the band to form pleats in the band" (emphasis added).

Contrary to the examiner's apparent belief, the paper webs provided by Ottaviano as his stock material band are not adhered together. By way of explanation, this "adhered together" function is not performed by patentee's adhesive strip 234 (e.g., see figure 19) as the examiner seems to believe. Instead, "the

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strip **234** of adhesive is used to connect the confronting portions of the inwardly turned or inwardly rolled lateral edges of the stock webs together, to maintain the dunnage product P' in pad-like form" (column 9, lines 2-6).

As for the "alternatingly crumpling" step of appealed method claim 1, we find nothing and the examiner points to nothing in Ottaviano (or the other applied prior art) which teaches or would have suggested this step. In this regard, it is significant that the examiner has not specifically addressed this step in his exposition of the rejections before us. It is further significant that, in the "**Response to Argument**" section of the answer, the examiner has not responded to the appellant's arguments concerning this step. These circumstances compel a conclusion that the applied prior art would not have suggested the step in question.

For the above stated reasons, we cannot sustain the examiner's Section 103 rejection of claims 1-13 as being unpatentable over Ottaviano in view of Givens or his alternative Section 103 rejection of claim 6 as being unpatentable over Ottaviano in view of Givens and Baldacci.

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As a final matter of concern, we observe that the appellants' disclosure on specification page 24 appears to be missing (i.e., between lines 8 and 9) an introductory paragraph concerning figures 6-10 (Cf., the introductory paragraph at lines 29-33 in column 3 of the appellant's patent number 5,766,736). This informality is deserving of correction.

The decision of the examiner is reversed.

REVERSED

BRADLEY R. GARRIS)	
Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
TERRY J. OWENS)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
)	
)	
ROMULO H. DELMENDO)	
Administrative Patent Judge)	

BRG:hh

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